

ATTACHMENT

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**CALIFORNIA BOARD OF ACCOUNTANCY**

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Attachment F



**ENFORCEMENT PROGRAM OVERSIGHT COMMITTEE  
 MINUTES OF MEETING**

May 18, 2006

HILTON SAN JOSE  
 300 Almaden Boulevard  
 San Jose, California 95110

**FINAL****I. CALL TO ORDER**

Thomas Iino, Committee Chair, called the meeting of the Enforcement Program Oversight Committee (EPOC) to order at 1:30 p.m. on May 18, 2006. Mr. Iino stated that to ensure compliance with the Bagley-Keene Open Meeting Act, when a quorum of the Board is present at this meeting (eight members of the Board), Board members who are not serving on the EPOC must attend as observers only.

**a. EPOC Members in Attendance**

Thomas Iino, Chair	1:30 p.m. to 2:55 p.m.
Richard Charney	1:30 p.m. to 2:55 p.m.
Ruben Davila	1:30 p.m. to 2:55 p.m.
Clifton Johnson	1:30 p.m. to 2:55 p.m.
Bill MacAloney	1:30 p.m. to 2:55 p.m.
Renata Sos	1:30 p.m. to 2:55 p.m.
David Swartz	1:30 p.m. to 2:55 p.m.

**b. Board Staff and Legal Counsel in Attendance**

Mary Crocker, Assistant Executive Officer  
 Michael Granen, Deputy Attorney General  
 Gregory Newington, Chief, Enforcement Division  
 George Ritter, Legal Counsel, Department of Consumer Affairs  
 Michele Santana, Enforcement Analyst  
 Carol Sigmund, Executive Officer  
 Aronna Wong, Legislative Analyst

**c. Others in Attendance**

Julie D'Angelo-Fellmeth, Center for Public Interest Law  
 Mike Duffey, Ernst and Young LLP  
 Bobbie Jarvis, California Society of Accounting and Tax Professionals (CSATP)  
 Robert A. Petersen  
 Richard Robinson, Robinson & Associates  
 Hal Schultz, California Society of Certified Public Accountants (CalCPA)  
 Jeannie Tindel, California Society of Certified Public Accountants (CalCPA)

- d. Board Members Observing  
Ronald Blanc  
Donald Driftmier  
Sally Flowers  
Stuart Waldman

## II DRAFT MINUTES OF JANUARY 19, 2006, EPOC MEETING

Following review, it was moved by Ms. Sos, seconded by Mr. Johnson, and unanimously carried to approve the minutes of the January 19, 2006, EPOC meeting.

## III. PROPOSED REVISIONS TO SECTION 99 RELATED TO ACTS AND CRIMES SUBSTANTIALLY RELATED TO THE PRACTICE OF PUBLIC ACCOUNTANCY

Mr. Iino provided background on this agenda item, stating that the EPOC had discussed the Board's current criteria for substantially related acts and crimes set forth in California Code of Regulations Section 99, at the January 19, 2006, EPOC meeting. The EPOC agreed at that time that expanding Section 99 would assist Board staff in substantiating substantial relationship and had requested that Board staff and legal counsel draft revisions to Section 99 for the EPOC's review.

The proposed revisions to Section 99 (see Attachment 1) were provided in the agenda packets.

The EPOC first discussed the revision to move "fraud" and "dishonesty" in Subsection 99(c) to Subsection 99(a). During discussion, it was noted that the intent of moving the language was to clarify that "fraud" and "dishonesty" are not limited to the practice of public accountancy, but rather to the qualifications, functions, or duties of a certified public accountant.

**Following discussion, it was moved by Ms. Sos, seconded by Mr. Johnson, and unanimously carried to recommend to the Board to approve the proposed revisions to California Code of Regulations, Title 16, Division 1, Subsections 99(a) and 99(c) (Attachment 1).**

The EPOC next discussed proposed Subsection 99(d). Ms. Sos inquired about the use of the language "professional capacity" as opposed to "professional practice." Mr. Granen commented that "professional practice" is a more limited term and would have an impact on the Board's ability in terms of prosecution. Mr. Newington added that "professional practice" could possibly omit licensees who commit an act or crime under their license while employed in private industry.

Mr. Swartz expressed concern about the use of "potential" in connection with risk and how the Board would discipline someone for being a potential risk. Mr. Granen commented that "potential" provides a means to allow the Board to apply its reasonable judgment in determining risk. It was noted that it most likely would be used in determining substantially related risk in conviction cases.

Following discussion, it was moved by Ms. Sos, seconded by Dr. Charney, and unanimously carried to recommend to the Board to approve California Code of Regulations, Title 16, Division 1, Subsection 99(d), as drafted (Attachment 1).

#### **IV. CONSIDERATION OF QUESTIONS AND ANSWERS REGARDING SOFTWARE VENDORS ACCESS TO CONFIDENTIAL CLIENT DATA**

Mr. Newington presented the questions and answers (see Attachment 2) related to California Code of Regulations Section 54.1 drafted by the Administrative Committee. He noted that these questions and answers (Q&As) were prepared at the request of the Board following the regulation hearing for Section 54.1. The intent of the Q&As is to provide general guidance to practitioners about Section 54.1 requirements.

The EPOC reviewed the Q&As. There were no objections raised with respect to Nos. 1, 2, 7, and 8 as written.

Messrs. Robinson and Duffy expressed concern with No. 5 in regard to the scope of information to be disclosed and the recipient of the information. They noted that this degree of specificity could create a series of impediments because the scope and the recipient of the information often are not known at the beginning of an engagement and often change during the course of an engagement. Mr. Duffy commented that the specificity of No. 5 conflicts with the general anticipatory disclosure expressed in No. 2.

Ms. Sos suggested removing the references to "scope" and "to whom it will be disclosed" in the first sentence in Answer No. 5. In response to Ms. Sigmann's inquiry about the last sentence in the answer, Ms. Sos confirmed that it was acceptable.

Mr. Duffy questioned the second paragraph in Answer No. 4 which requires written notification and permission if the information will be disclose outside of the U.S. but within the same firm. Ms. Sos commented that she did not recall the Board discussing this issue, but her concept of Section 54.1 is that it pertains to disclosure to entities outside the firm-client relationship.

Messrs. Robinson and Duffy noted that they did not have any initial objections to Q&A Nos. 3 and 6; however, they would like more time for study to ensure that the language would not result in unintended consequences in terms of client services.

Following discussion, it was moved by Ms. Sos, seconded by Mr. Johnson, and unanimously carried to recommend to the Board the following regarding the proposed Questions and Answers related to California Code of Regulations, Title 16, Division 1, Section 54.1 (Attachment 2).

- Approve Q&A Nos. 1, 2, 7, and 8 as written.
- Approve Q&A No. 5 revising the first sentence to read:  
"Any reasonable written document that acknowledges the client is aware that the information may be disclosed and confirms in writing the client's permission for the disclosure."
- Renumber Q&A No. "2" to No. "3" and renumber No. "5" to No. "2."

## Memorandum

EPOC AGENDA ITEM III.  
May 18, 2006

BOARD AGENDA ITEM IX.E.3.  
May 19, 2006

To : Thomas Iino, Chair, EPOC  
EPOC Members  
Board Members

Date : April 28, 2006

Telephone : (916) 561-1731

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E-mail : gnewington@cba.ca.gov

From :   
Gregory P. Newington  
Chief, Enforcement Division

Subject : **PROPOSED REVISIONS TO SECTION 99 RELATED TO ACTS AND CRIMES  
SUBSTANTIALLY RELATED TO THE PRACTICE OF PUBLIC ACCOUNTANCY**

### Background

California Business and Professions Code Section 480 provides that the Board may deny a license on the grounds that the applicant has been convicted of a crime substantially related to the qualification, functions, or duties of a CPA. In that connection, Section 481 requires that each board develop criteria to aid it when considering whether an act or crime is substantially related to the qualification, functions, or duties of the profession it regulates. The criteria are to be used when considering the denial, suspension, or revocation of a license.

The Board's current criteria for the types of acts or crimes considered to be substantially related to the practice of public accountancy are provided in Board Regulation Section 99.

### EPOC Discussion

At the January 19, 2006, EPOC meeting, the Committee discussed the Board's current substantial relationship criteria.

The EPOC members agreed that expanding Section 99 would assist Board staff in substantiating substantial relationship and give them more latitude to exercise their judgment on a case by case basis.

With that in mind, Deputy Attorney General Michael Granen suggested language to add a general subsection to Section 99. The EPOC concurred with this concept; however, they believed the language to be too broad and could be subject to overapplication.

The EPOC requested that staff draft revisions to Section 99 based on Mr. Granen's suggested language while at the same time addressing the EPOC's concerns about overapplication.

**Draft  
revisions**

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Attached (Attachment 4) are the proposed revisions to Section 99 based on discussion at the January 19, 2006, EPOC meeting.

The revisions also incorporate Ms. Sos's suggestion that "dishonesty" and "fraud" from Section 99(c) be moved to Section 99(a) in order to show that any act involving dishonesty, fraud, or breach of fiduciary responsibility is substantially related.

**Attachments**

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Attachment 1 – California Business and Professions Code Sections 480 and 481.

Attachment 2 – California Code of Regulations Section 99.

Attachment 3 – Excerpt regarding substantial relationship from the draft January 19, 2006, EPOC meeting minutes.

Attachment 4 – Proposed revisions to Section 99.

**Action  
requested**

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This issue has been scheduled for action at the May 19, 2006, Board meeting under Agenda Item IX.E.3. It is requested that the EPOC members review the attached and discuss this issue in order to present a recommendation at the Board meeting.

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GPN:mls

## CALIFORNIA BUSINESS AND PROFESSIONS CODE

**Section 480 Grounds for Denial.** (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

- (1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.
  - (2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or
  - (3) Done any act which if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license. The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.
- (b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.
- (c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

**Section 481 Criteria for Related Crimes Required.** Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

# CALIFORNIA BOARD OF ACCOUNTANCY REGULATIONS

## HISTORY:

1. New section filed 1-18-2000; operative 2-17-2000 (Register 2000, No.3).

### **Section 99. Substantial Relationship Criteria.**

For the purposes of denial, suspension, or revocation of a certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a certified public accountant or public accountant if to a substantial degree it evidences present or potential unfitness of a certified public accountant or public accountant to perform the functions authorized by his certificate or permit in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

- (a) Fiscal dishonesty or breach of fiduciary responsibility of any kind;
- (b) Fraud or deceit in obtaining a certified public accountant's certificate or a public accountant's permit under Chapter 1, Division III of the Business and Professions Code;
- (c) Dishonesty, fraud, or gross negligence in the practice of public accountancy or in the performance of the bookkeeping operations described in Section 5052 of the code;
- (d) Violation of any of the provisions of Chapter 1, Division III of the Business and Professions Code or willful violation of any rule or regulation of the board.

NOTE: Authority cited: Sections 5010 and 5018, Business and Professions Code. Reference: Sections 481 and 5100, Business and Professions Code.

## HISTORY:

1. New section filed 2-14-75; effective thirtieth day thereafter (Register 75, No. 7).
2. Amendment filed 4-12-83; effective thirtieth day thereafter (Register 83, No. 16).

### **Section 99.1. Rehabilitation Criteria for Denials, Suspensions, Revocations, Restorations, Reduction of Penalty, Etc.**

When considering the denial of a certificate or permit under Section 480 of the Business and Professions Code, the suspension or revocation of a certificate or permit or restoration of a revoked certificate under Section 11522 of the Government Code, the board, in evaluating the rehabilitation of the applicant and his present eligibility for a certificate or permit, will consider the following criteria:

- (1) Nature and severity of the act(s) or offense(s).
- (2) Criminal record and evidence of any act(s) committed subsequent to the act(s) or offense(s) under consideration which also could be considered as grounds for denial, suspension or revocation.



## CALIFORNIA BUSINESS AND PROFESSIONS CODE

### Section 99. Substantial Relationship Criteria

For the purposes of denial, suspension, or revocation of a certificate or permit pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions, or duties of a certified public accountant or public accountant if to a substantial degree it evidences present or potential unfitness of a certified public accountant or public accountant to perform the functions authorized by his or her certificate or permit in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

- (a) ~~Fiscal dishonesty~~ Dishonesty, fraud, or breach of fiduciary responsibility of any kind;
- (b) Fraud or deceit in obtaining a certified public accountant's certificate or a public accountant's permit under Chapter 1, Division III of the Business and Professions Code;
- (c) ~~Dishonesty, fraud, or gross~~ Gross negligence in the practice of public accountancy or in the performance of bookkeeping operations described in Section 5052 of the code;
- (d) Any act or crime which evidences a present or potential risk to the safety or welfare of any client, potential client, co-worker, or any other person who may be encountered by the licensee in his or her professional capacity.
- ~~(d)~~(e) Violation of any of the provisions of Chapter 1, Division III of the Business and Professions Code or willful violation of any rule or regulation of the board.